IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Chimanlal Vs. Mahendra Kumar & Anr.
S.B. CR. REVISION PETITION NO.830/2006

Against order dated 24.07.2006 passed by Sessions Judge, Sri Ganganagar in Sessions Case No.15/2005 - State Vs. Mahenda Kumar.

DATE OF ORDER :: 20th October, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. S.R. Sharma for petitioner.
Mr. H.S.Sidhu and Mr. Trilok Joshi for respondent No.1.
Mr. V.R. Mehta, Public Prosecutor.

BY THE COURT:

The present criminal revision petition under Sec.397 & 401 Cr.P.C. challenges the order of Sessions Judge, Sri Ganganagar dated 24.07.2006 passed on an application moved under Sec.311 Cr.P.C. in Sessions Case No.15/2005 dismissing the application praying for examining the Handwriting Expert as a prosecution witness.

The facts relevant for the present revision petition are that before the Court below, Public Prosecutor filed an application under Sec.311 Cr.P.C. with the averments that defence has produced document Ex.D/4 in the Court stating that the said document bears signatures of complainant while complainant Chimna Ram (PW14) has denied the same and since the signatures of Chimna Ram on the document are forged and report of the Handwriting expert Ex.P/48 has been exhibited, it is necessary to summon Handwriting Expert Shri Vikramraj Singh Chouhan of Patiala Bureau of Identification, Puri Road, Near Arya Samaj, Patiala (Pujab) as a witness for the prosecution because the defence has sought time to produce evidence for proving Ex.D/4. It was stated that in order to know as to whether the document is forged, it is essential to get the Handwriting Expert examined but since the report in this connection Ex.P/48 was received late, same could neither be produced along with the documents of prosecution nor the Handwriting Expert could be summoned as a witness and the report tendered in evidence was exhibited in presence of one witness for defence but in the interest of justice the Handwriting Expert is required to be summoned

to prove the same. Prayer was made to pass orders to call the Handwriting Expert in evidence. Copy of the application was supplied to the Advocate for accused, however, the defence side filed no written reply.

The trial Court after hearing both side, rejected the application. Hence, the present revision petition has been filed.

Heard learned counsel for the parties and perused the material placed on record.

The contention of the learned counsel for the petitioner is that in the instant case the defence has exhibited document Ex.D/4 on which PW14 Chiman Lal has denied his signature and the defence is trying to prove this document on the basis of evidence and the defence has been permitted. According to the learned counsel, it is essential to call the Expert who has given the report in this behalf, which has been tendered in evidence for the just decision of the case. It has also been submitted that present case is a case based on circumstantial evidence and

in order to decide the case in a just manner, motive aspect is relevant and when defence is trying to prove this document by adducing defence evidence then to clinch the issue and to arrive at a proper decision, it is necessary that the expert should be examined so that there remain no confusion in relation to document Ex.D/4 tendered in evidence as to whether the document is forged or a genuine one.

On the other hand, it has been contended that the prosecution has utterly failed to take proper steps in the matter in time and after a very belated stage and after filing this document by the defence has moved this application therefore the trial Court has correctly rejected the application moved by the prosecution.

I have considered the submissions made before me and perused the material available on record.

It is to be seen that the learned trial Court while rejecting the application moved by the prosecution under Sec.311 of the Cr.P.C. has stated that the application was

not maintainable for the reason that it was moved at a very belated stage. It has also been stated in the order that the application was moved after the document having been tendered in evidence by the defence as Ex.D/4, therefore, purpose of Sec.311 is not that to allow the prosecution a chance to rebut the defence by moving application and calling witnesses. The trial Court further stated in the order that it was not necessary to summon the Handwriting Expert in the case because the present case is one under Sec.302 IPC and the merit of the case would be examined on the basis of entire material placed before it.

The reasoning given by the trial Court for rejecting the application, in my opinion, cannot be said to be legally tenable for the simple reason that a bare reading of Sec.311 of the Cr.P.C. would go to show that Court has been given ample power in the interest of justice to reach to a just decision in a case to consider such application at any stage of the trial. The Hon'ble Apex Court in the case of Rajendra Prasad Vs. The Narcotic Cell through its officer incharge (1999 Cr.L.R.(SC)434), has observed that 'lacuna in the prosecution must be understood as the inherent

weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be fore-closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better'.

In the case of Mohan Lal Shamji Soni Vs. Union of India (AIR 1991 SC 1346), the Hon'ble Apex Court has observed that the criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair lay and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any

person which would depend on the facts and circumstances of each case.

In Jamatraj Kewalji Govani Vs. The State of Maharashtra (1967 (3) SCR 415), it has been observed that it would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in Court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the Court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the Court is right in thinking that the new evidence is needed by it for a just decision of the case.

In view of above authoritative pronouncement made by the Hon’ble Apex Court, it becomes absolutely clear that the Court is having ample power to consider applications under Sec.311 of the Cr.P.C. at any stage of the trial. It does not appear that if the trial is at the fag end

then such application will not be considered. In my opinion, what is important is that if the Court comes to the conclusion that in the interest of justice it is essential for reaching to just conclusion then in those circumstances such applications are required to be allowed.

Now coming to the facts of the present case that PW14 Chiman Lal has denied the signatures on Ex.D/4 and the defence inspite of Expert's Report Ex.P/48 is leading evidence in relation to the above report. The present case is based on circumstantial evidence. The case is one under Sec.302 IPC, therefore, in my humble opinion for reaching a correct and just decision, it was essential for the Court to have allowed the application and the same was not required to be rejected on technical grounds. Allowing this application is definitely not going to prejudice either side but acceptance of the application would definitely help the Court in reaching at the just and correct decision finally. It is correct that it is not only this Ex.D/4 which will be considered by the trial Court while giving final verdict but other material placed before the Court would also require consideration. It is also relevant to mention here that the

motive aspect is also required to be examined in the present case in view of the fact that it is a case based on circumstantial evidence then Ex.D/4 becomes an important document. It shall be worthwhile to mention here that even from the point of view of defence this document is important as they are leading evidence to prove the same, therefore, application moved under Sec.311 Cr.P.C. was required to be allowed. The reasoning given by the learned trial Court appears not legally tenable and the order passed rejecting the application requires to be set aside.

Accordingly, the revision petition is allowed, order dated 24.07.2006 passed by Sessions Judge, Sri Ganganagar in Sessions Case No.15/2005 is set aside, the application moved under Sec.311 Cr.P.C. is allowed and the trial Court is directed to summon the Handwriting Expert for recording his statement and to take proper steps expeditiously.

(SATYA PRAKASH PATHAK) J.

/jpa